

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DANIEL F. BARRETT
(CRD No. 1789580),

Respondent.

Disciplinary Proceeding
No. E062003043403

Hearing Officer – DRP

DEFAULT DECISION

July 5, 2006

Respondent is barred from association with any member firm in any capacity for failing to respond to NASD's requests for testimony, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. In light of the bar, no additional sanctions are imposed for making unsuitable recommendations, in violation of NASD Conduct Rules 2310 and 2110.

Appearances

Karen E. Whitaker, Regional Counsel, Dallas, TX (Rory C. Flynn, Washington, DC, Of Counsel) for Complainant.

No appearance by or for Daniel F. Barrett.

DECISION

I. Background

On December 21, 2005, the Department of Enforcement filed a two-count Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Daniel F. Barrett (Respondent or Barrett) made unsuitable investment recommendations, in violation of NASD Conduct Rules 2310 and 2110, and failed to appear for on-the-record testimony, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. Respondent did not file an Answer to the Complaint.

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Accordingly, on March 23, 2006, Enforcement filed a motion for entry of default decision, supported by the declaration of Karen E. Whitaker and four exhibits. Barrett did not file a response to the motion. For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On or about December 20, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent by first class and certified mail to Respondent's last known residential address, as reflected in the Central Registration Depository (CRD address),² and to an alternate address.³ Respondent did not file an Answer.⁴

On or about January 20, 2006, Enforcement served the Complaint and Second Notice of Complaint on Respondent by first class and certified mail at both the CRD and alternate addresses. As before, Respondent did not file an Answer.⁵

On or about February 24, 2006, Enforcement served the Complaint and another Notice of Complaint on Respondent by first class and certified mail at the forwarding address obtained from the certified mail receipt (forwarding address). Respondent failed to file an Answer.⁶

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement.

² Respondent's CRD address is [REDACTED]

³ The alternate address is [REDACTED] Enforcement obtained the alternate address during its investigation.

⁴ The first-class mailing to the CRD address was not returned. The receipt from the certified mailing to the CRD address was signed "LaVerne Barrett," but was also marked "return to sender" and "unclaimed." The first-class and certified mailings to the alternate address were returned; the former was marked "return to sender" and "undeliverable as addressed/unable to forward," while the latter was marked "return" and "forward expired."

⁵ The certified receipt from the CRD address was returned, signed "LaVerne Barrett," and had a handwritten forwarding address of [REDACTED] (forwarding address). The first-class mailing to the CRD address was not returned. Both the first-class and certified mailings to the alternate address were returned, marked "return to sender" and "undeliverable as addressed/unable to forward."

⁶ The certified receipt was returned, signed "L Barrett." The first-class mailing was not returned.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby providing constructive notice of this proceeding.⁷ By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent entered the securities industry in January 1988 and was registered with several member firms before joining NASD member Oxford Financial Group (Oxford) in December 1999. Respondent first registered with Oxford as an investment company/variable contracts products representative, and subsequently registered as a corporate securities representative. He maintained Series 6 and 62 licenses with Oxford until his registration was terminated on December 31, 2003. Since that time, he has not been associated or registered with any NASD member.

Respondent is subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the termination of Respondent's registration with Oxford, alleges misconduct that occurred while he was registered, and failure to comply with requests for testimony made during the two-year period following the termination.

⁷ It was Respondent's responsibility to provide CRD with any new address, even after he left the industry. *Dep't of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip LEXIS 4, at *12 (NAC Mar. 27, 2002). In any event, Enforcement also served Respondent at two other addresses, including the forwarding address.

IV. Findings of Fact and Conclusions of Law

A. Unsuitable Recommendations

The first cause of the Complaint charges that Respondent violated NASD Conduct Rules 2310 and 2110 by recommending unsuitable transactions for customer DB's account. More specifically, the Complaint alleges that DB was a 63-year-old retiree with limited income, resources and investment experience. She had a total net worth of \$250,000, including a liquid net worth of \$10,000, and an annual household income of \$27,500. DB's risk tolerance was low, and her investment objective was preservation of capital with some growth.

According to the Complaint, Respondent contacted DB in approximately July 2001 to recommend that she invest in ORG, a security offering conducted by Oxford's parent company to fund Oxford's existing operations and expand the firm. The offering memorandum disclosed that an investment in ORG is "highly speculative and should be considered only by persons able to bear the economic risk of the investment for an indefinite period." The memorandum also warned of several risk factors, including the lack of a marketplace for ORG stock, which rendered the security highly illiquid.

Respondent, who never provided a copy of the offering memorandum or disclosure statement to DB, told her the opportunity was only being offered to family and friends and characterized it as a safe investment. Based on Respondent's recommendation, DB purchased \$6,000 of ORG stock in July 2001. When Respondent recommended she purchase more ORG stock in November 2001, DB invested another \$9,000. DB lost her entire investment after Oxford ceased business operations in July 2004.

A registered representative must have a reasonable basis for believing that a recommended transaction is in the customer's best interests and is appropriate in light of that

customer's investment objectives and financial situation.⁸ To ensure that a representative can make this determination, NASD Conduct Rule 2310(b) requires reasonable efforts to obtain information concerning, among other things, the customer's financial status and investment objectives. Put another way, a broker is obligated to know the customer *and* the recommended security.

Respondent, who knew or should have known DB's financial status and needs, recommended a highly speculative and illiquid security that was unsuitable in light of DB's age, financial status, investment objective and risk tolerance. Accordingly, the allegations in the first cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent violated NASD Conduct Rules 2310 and 2110.⁹

B. Failure to Appear for On-the-Record Testimony

The second cause of the Complaint charges that Respondent violated Procedural Rule 8210 and Conduct Rule 2110 by failing to appear for on-the-record testimony (OTR). The Complaint alleges that on November 5, 2004, the staff sent a letter to Respondent by first class and certified mail to his CRD and alternate addresses, pursuant to NASD Procedural Rule 8210, requesting that he appear for an OTR on December 1, 2004. In the letter, the staff asked

⁸ NASD Conduct Rule 2310; *Wendell D. Belden*, No. C05010012, 2002 NASD Discip. LEXIS 12, at *13 (Aug. 13, 2002), *aff'd*, Exchange Act Release No. 47,859, 2003 SEC LEXIS 1154 (May 14, 2003).

⁹ A violation of NASD Conduct Rule 2310 also constitutes a violation of Conduct Rule 2110's ethical obligation to observe high standards of commercial honor and just and equitable principles of trade. *See Steven J. Gluckman*, Exchange Act Release No. 41,6128, 1999 SEC LEXIS 1395, at *22 (July 20, 1999) (citations omitted); *Larry Ira Klein*, Exchange Act Release No. 37,835, 1996 SEC LEXIS 2922 (Oct. 17, 1996)

Respondent to contact NASD's Dallas District Office by November 12 to confirm his appearance for testimony. Barrett did not respond to the request.¹⁰

The Complaint further alleges that on November 23, 2004, the staff sent a second letter pursuant to Rule 8210 requesting that Respondent appear for an OTR on December 1, 2004. The staff again asked Respondent to contact the Dallas District Office to confirm his appearance for testimony. The request was sent by first class and certified mail to Respondent's CRD and alternate addresses.¹¹ Respondent did not appear for the OTR.

Procedural Rule 8210 provides that NASD "staff shall have the right to require a member . . . to provide information . . . and to testify . . . with respect to any matter involved in [an] investigation" Rule 8210 further states that "no . . . person shall fail to provide information . . . pursuant to this Rule." Rule 8210 imposes an absolute obligation on members and associated persons to cooperate in NASD investigations.¹² Accordingly, members and associated persons have a duty to cooperate fully and promptly with NASD requests for information.¹³

By mailing the requests to Respondent at his last known residential address as reflected in CRD, the staff complied with Rule 8210(d), and pursuant to that rule, Respondent is deemed to have received them.¹⁴ Thus, the allegations in the second cause of the Complaint, which are

¹⁰ The first-class mailing to the CRD address was not returned, and the return receipt for the certified mailing was returned, marked "return to sender" and "unclaimed." The certified mailing to the alternate address was returned, marked "undeliverable as addressed." The first-class mailing was returned marked "forward time expired," and "return to sender," bearing the CRD address as a forwarding address.

¹¹ The certified letter to the CRD address was returned, marked "return to sender," "unclaimed," and "unable to forward." The first-class mailing was not returned. The certified letter to the alternate address was returned, marked "undeliverable as addressed," while the first-class letter was not returned.

¹² *Toni Valentino*, Exchange Act Release No. 49,255, 2004 SEC LEXIS 330, at *14 (Feb. 13, 2004).

¹³ *Brian L. Gibbons*, Exchange Act Release No. 37,170, 1996 SEC LEXIS 1291, at *7 (May 8, 1996), *aff'd*, 112 F.3d 516 (9th Cir. 1997).

¹⁴ Though not required to do so, the staff also mailed copies of the first and second request letters to the alternate address.

deemed admitted, are sufficient to establish for purposes of this default decision that Respondent failed to appear for on-the-record testimony, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

V. Sanctions

Under NASD Sanction Guidelines, a bar is standard for failure to respond in any manner to requests for information or testimony made pursuant to Rule 8210.¹⁵ There is no evidence of any mitigating circumstances here that would warrant any sanction less than a bar. Accordingly, Respondent will be barred in all capacities for this violation.

For making unsuitable recommendations, the Guidelines recommend a fine of \$2,500 to \$75,000, along with a suspension for ten business days to one year.¹⁶ In egregious cases, a longer suspension of up to two years or a bar should be considered. Enforcement argues that Respondent's misconduct was egregious and recommends a fine of \$25,000 and a two-year suspension. Because DB has been reimbursed for her loss, Enforcement does not seek restitution.

The Guidelines list no explicit factors for an adjudicator to consider when imposing sanctions for unsuitable recommendations, but the Hearing Officer agrees that Respondent's misconduct was egregious. Respondent did not serve his customer's best interests when he twice recommended ORG, characterized it as a safe investment, and failed to send her the offering memorandum, which disclosed the risks inherent in this highly speculative security. In light of the bar imposed for failing to respond to requests for testimony, however, the sanctions

¹⁵ *NASD Sanction Guidelines* at 35 (2006 ed.).

¹⁶ *Id.* at 99.

Enforcement seeks would be redundant and serve no additional remedial purpose.¹⁷

Accordingly, no additional sanctions will be imposed for making unsuitable recommendations.

VI. Conclusion

Respondent Daniel F. Barrett is barred from associating with any member firm in any capacity for failing to appear for on-the-record testimony, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. In light of the bar, no further sanctions are imposed for making unsuitable recommendations, in violation of NASD Conduct Rules 2310 and 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.

Dana R. Pisanelli
Hearing Officer

Dated: July 5, 2006
Washington, DC

Copies to: Daniel F. Barrett (*via overnight and first class mail*)
Karen E. Whitaker, Esq. (*via electronic and first class mail*)
Mark P. Dauer, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

¹⁷ See *Dep't of Enforcement v. Castle Securities Corp.*, No. C3A010036, 2004 NASD Discip. LEXIS 1, at **36-37 (NAC Feb. 19, 2004); *Dep't of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002).

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant

v.

Daniel Forrest Barrett
Investment Company & Variable
Contracts Products Representative

Respondent

Disciplinary Proceeding
No. E062003043403

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Daniel Forrest Barrett ("Barrett") entered the securities industry in January 1988, when he associated with an NASD member firm. He subsequently registered with six other NASD member firms before registering with Oxford Financial Group ("Oxford Financial") in December 1999. He remained at the firm until his termination on December 31, 2003, and since that time has not registered with any other NASD member firm. During his career in the securities industry, Barrett obtained Series 6, 7, 62 and 63 securities licenses.
2. Although Barrett is no longer associated with an NASD member firm, he remains subject to the jurisdiction of NASD pursuant to Article V, Section 4 of the Association's By-Laws, which provides for a two-year period of retained jurisdiction over formerly associated persons. Accordingly, NASD retains jurisdiction over Barrett until December 30, 2005.

BACKGROUND

3. In approximately December 2000, Oxford Financial commenced several securities offerings conducted by its parent company, Oxford Representatives Group ("ORG"). The offerings

were created to fund Oxford Financial's existing operations and to grow and expand the company. The ORG offering memoranda were replete with disclosures regarding the risks associated with the investment. According to the memoranda, "an investment in [ORG securities] is highly speculative and should be considered only by persons able to bear the economic risk of the investment for an indefinite period." The memoranda also warned that investors should consider each of the several pages of risk factors before making an investment in ORG. Included among the risk factors was the fact that there was no immediate marketplace for ORG stock and, consequently, the stock was highly illiquid.

FIRST CAUSE OF COMPLAINT

Barrett Made Unsuitable Investment Recommendations

(Violations of NASD Conduct Rules 2110 and 2310)

4. Paragraphs 1 through 3 above are realleged and incorporated herein by reference.
5. In approximately July 2001, Barrett contacted DB, a 63-year-old retiree with limited income, resources and investment experience, about investing in ORG stock. He represented to DB that the investment was safe, and "was only being offered to family and friends."
6. Based on Barrett's representations and recommendation, DB purchased \$6,000 worth of ORG stock.
7. In November 2001, Barrett contacted DB and recommended another investment in ORG. Based on Barrett's recommendation, DB purchased \$9000 worth of ORG on November 29, 2001.
8. Barrett did not provide DB with an ORG offering memorandum or disclosure statement in connection with either of her ORG investments.
9. DB lost all of her investment principal when ORG stock became worthless after Oxford

Financial ceased business operations in July 2004.

10. At the time of Barrett's investment recommendations, DB's financial status was as follows:
\$250,000 net worth; \$10,000 liquid net worth; and \$27,500 annual income that consisted of \$13,500 in salary from a part-time job and her husband's disability payments in the amount of \$14,000 annually.
11. DB's investment objective was preservation of capital with some growth, and her risk tolerance was low.
12. Barrett's recommendation that DB purchase the high-risk ORG stock was unsuitable based on DB's age, financial status, investment objective and risk tolerance.
13. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2310 by Daniel Forrest Barrett.

SECOND CAUSE OF COMPLAINT

Barrett Failed to Appear for On-The-Record Testimony

(Violations of NASD Conduct Rules 2110 and 8210)

14. Paragraphs 1 through 13 above are realleged and incorporated herein by reference.
15. By letter dated November 5, 2004, NASD staff requested, pursuant to Rule 8210, that Barrett appear at the Dallas District Office and provide on-the-record testimony on December 1, 2004. The letter was sent via regular and certified mail to Barrett's CRD address of record: [REDACTED] ("CRD address") and an alternate address: [REDACTED] ("secondary address"). The letter required Barrett to contact the District Office no later than November 12, 2004, to confirm his appearance for testimony.
16. The letter sent via certified mail to the CRD address was returned to the District Office

marked, "Returned to Sender" and "Unclaimed." The letter sent via regular mail was not returned to the District Office. The letter sent to the secondary address via certified mail was returned "undeliverable as addressed." The letter sent via regular mail was returned to the District Office marked, "Forward Time Expired" and "Return to Sender." The returned letter also contained a forwarding address, which was the same as the CRD address.

17. By letter dated November 23, 2004, the staff again requested, pursuant to Rule 8210, that Barrett appear at the District Office and provide on-the-record testimony on December 1, 2004. The letter was sent via regular and certified mail to Barrett's CRD and secondary addresses. The letter required Barrett to contact the District Office on or before December 1, 2004, to confirm his testimony appearance. The letter sent via certified mail to the CRD address was returned to the District Office marked, "Returned to Sender," "Unclaimed," and "Unable to Forward." The letter sent via regular mail was not returned to the district office. The letter sent to the secondary address via certified mail was returned "undeliverable as addressed." The letter sent via regular mail was not returned to the District Office.

18. Barrett never appeared for sworn testimony.

19. Such acts, practices, and conduct constitute violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Daniel Forrest Barrett.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

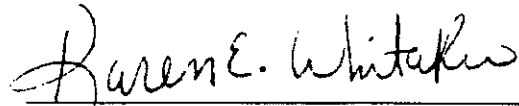
- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310.
- C. An order requiring Respondent to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

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- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Date: December 20, 2005



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